

HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION NO. 708 OF 1992.

DATE OF DECISION: 2nd September, 1995.

FOR APPROVAL AND SIGNATURE

THE HONOURABLE THE CHIEF JUSTICE B. N. KIRPAL.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves T....R

question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr.G.D.Bhatt, Advocate, for the Petitioner.

Mr.S.M.Shah, Advocate, for the Respondent.

CORAM: B. N. KIRPAL, C.J.,
2nd September, 1995.

ORAL JUDGMENT.

This Revision Application under S.115 C.P.Code is for setting aside the order dated 10th February, 1992, passed by the learned Civil Judge (S.D.), Rajkot below application Ex.8 in Special Civil Suit No.110 of 1985, whereby the learned Judge had rejected the petitioner's application under Order VII Rr.10 and 11 of the C.P.Code.

2. Briefly stated, the facts are that the Respondent herein, had placed orders on the petitioner for supply of six furnaces. Of these orders, the respondent-plaintiff company had placed one order on 20.7.1981, another order on 11.9.1981, three orders on 19.3.1982, and one more order on 27.4.1982. The goods were to be supplied at Rajkot and the plaintiff had paid a total amount of Rs.16,41,644.21ps. The total amount which was payable, is stated to be about Rs.20 lacs.

3. The case of the respondent was that the goods supplied by the petitioner were defective. The defects were stated in the plaint, and a suit for the recovery of the money paid plus other amount was filed at Rajkot. The claim in the suit was for the payment of Rs.24,61,127.12ps.

4. The case of the petitioner herein was that according to the terms and conditions, applicable to the work orders, the suit could be filed only at Calcutta. This plea was based on the following condition, which was contained in the work order :

" All orders placed on Wesman or in any of our
Branch Offices anywhere in India shall be subject
to the jurisdiction of Calcutta Court. "

The contention of the petitioner herein is that the jurisdiction of all other courts stood excluded, and therefore, the plaint should be returned to the plaintiff for presentation to the court of competent jurisdiction, viz. the court at Calcutta.

5. The learned Civil Judge (S.D.), referred to a number of judicial decisions, and by the impugned order came to the conclusion that the court at Rajkot had the jurisdiction to hear the case. The application under Order VII Rr.10 and 11 was accordingly dismissed.

6. On behalf of the petitioner, while referring to the decision in the case of S.MANUEL RAJ AND CO. vs. J.MANILAL AND CO., AIR 1963 Gujarat, 148, it is contended that a clause like the present would amount to ousting the jurisdiction of the court at Rajkot.

The other decision which is relied upon by the learned Counsel for the petitioner is in the case of SRI RAJENDRA MILLS LTD., vs. MESSRS.H.V.M.HAZI HASAN DADA AND ANOTHER, AIR 1970 Calcutta, 342. In that case, the clause of the contract between the parties provided that all suits arising on or out of the contract could be instituted in the court at Salem. The Calcutta High Court held that when a suit could be instituted in two courts having concurrent jurisdiction, it is open to the parties to make choice and restrict the jurisdiction to one of the courts, and by such an agreement, the parties must be regarded as having waived their right to institute any action in a court other than at Salem.

The learned Counsel for the petitioner submits that for a period of nearly 8 to 9 months, different work orders were placed, and the parties knew of the existence of the clause limiting the jurisdiction to Calcutta, and therefore, the principle of waiver enunciated by the Calcutta High Court in SRI RAJENDRA MILLS' case applies.

7. In my opinion, the matter stands concluded by the decision of the Supreme Court in the case of A.B.C.LAMINART PVT. LTD. AND ANOTHER vs. A.P.AGENCIES, SALEM, AIR 1989 SC, 1239. In that case, the clause in the agreement stated that ' Any dispute arising out of this sale shall be subject to Kaira jurisdiction '. While holding that a contract between the parties to vest jurisdiction in one of the courts within whose jurisdiction the cause of action arises, would not be against public policy, and also while holding that if in the confirmation order it is mentioned that the same is '

subject to the terms anT....R

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term would form part of the agreement. The court however, took note of the fact that the so called exclusion clause did not use the words like 'exclusive', 'alone', 'only', etc. In A.B.C.LAMINART PVT.LTD.'s case, while dealing with such clause, the Supreme Court at page 1246 observed as follows :

" If out of the two jurisdictions one was excluded by Clause 11 it would not absolutely oust the jurisdiction of the Court and, therefore, would not be void against public policy and would not violate Sections 23 and 28 of the Contract Act. The question then is whether it can be construed to have excluded the jurisdiction of the Court at Salem. In the clause ' any dispute arising out of this sale shall be subject to Kaira jurisdiction' ex facie we do not find exclusive words like 'exclusive', 'alone', 'only' and the like. Can the maxim 'expressio unius est exclusio alterius' be applied under the facts and circumstances of the case ? The order of confirmation is of no assistance. The other general terms and conditions are also not indicative of exclusion of other jurisdictions. Under the facts and circumstances of the case we hold that while connecting factor with Kaira jurisdiction was ensured by fixing the situs of the contract within T....R

connecting factors were not clearly, unambiguously and explicitly excluded. That being the position it could not be said that the jurisdiction of the Court at Salem which Court otherwise had jurisdiction under law through connecting factor of delivery of goods thereat was expressly excluded. We accordingly find no error or infirmity in the impugned judgment of the High Court. "

8. Learned Counsel for the petitioner also submitted that in the decision in A.B.C.Laminart Pvt.Ltd.'s case, the judgment of the single Judge of this Court in S.Manuel Raj's case (AIR 1963 Guj., 148) is referred to and is not disapproved, and therefore, the said decision should be followed.

9. It is, no doubt, true that the Supreme Court has referred to the judgment in S.Manuel Raj's case. But the ratio of the said decision can no longer be said to be good law inasmuch as the conclusion that has been arrived at by the Supreme Court in A.B.C.Laminart Pvt.Ltd.'s case, the relevant portion of which has been quoted hereinabove, takes a contrary view. It would appear that if a clause was to be regarded as restricting the jurisdiction of the civil court to one court, then, it would be appropriate that exclusive words like 'alone', 'only', 'exclusive' etc. should be there. Otherwise, exclusion of jurisdiction of other court would not necessarily follow, unless and until the other facts and circumstances of the case would show or can lead the court to a conclusion that the parties intended exclusion of the jurisdiction of other courts. It is precisely for this reason that the learned counsel for the petitioner sought to submit that because the work orders were placed at different points of time, over a period of few months, it must be inferred that the parties intended that the jurisdiction of the courts other than at Calcutta stood excluded. I am afraid, I am unable to come to this conclusion. The agreement between the parties has to be looked into at its entirety. There is nothing to show in the other general terms and conditions of the agreement that there was an intention to exclude the jurisdiction of all courts except Calcutta Court. There has to be clear, unambiguous and explicit exclusion of the court at Rajkot, and this does not seem to be so in the present case.

10. For the aforesaid reasons, it must be held that the trial court was right in rejecting the application of the petitioner.

11. The petitioner has been successful in protracting the trial of the suit against it merely by the aid and assistance of its application under Order VII Rr.10 and 11 C.P.Code, and the stay granted by this court. By rejecting the plea of the learned Counsel for the petitioner for staying the operation of this order for a period of six weeks, as the petitioner wants to approach the Supreme Court, I dismiss this petition, and impose Rs.5,000/- as costs. Rule discharged. Interim relief vacated.

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